

State of Maine

SUPREME JUDICIAL COURT

Docket No. BAR-18-10

BOARD OF OVERSEERS OF THE BAR	)	
Plaintiff	)	
	)	
v.	)	FINDINGS, CONCLUSIONS
	)	and ORDER
Jonathan C. Hull	)	
of Newcastle, ME	)	
Me. Bar #001584	)	
Defendant	)	

As a result of the Board of Overseers of the Bar's (the Board) filing of its Petition for Immediate Interim Suspension, this Court issued an August 23, 2018 Order suspending former attorney Jonathan C. Hull (Hull). Through its subsequent filing of a Disciplinary Information, the Board commenced further disciplinary action. Thereafter, the Board filed amended pleadings which alleged additional misconduct by Hull.

Prior to hearing in this matter, the parties notified the Court that they had reached agreement as to findings and a stipulated sanction. Appearing at the June 10, 2020 final hearing were Jonathan Hull, Aria Eee, Bar Counsel and James Mason, Attorney for Jonathan C. Hull.

Having reviewed the pleadings and the parties' stipulations, the Court finds as follows: Jonathan C. Hull of Newcastle, Maine, was at all times relevant hereto, an attorney duly admitted to and engaging in the practice of law in Maine. As such, Hull was subject to the Maine Bar Rules and the Maine Rules of Professional Conduct. Hull was admitted to the Maine Bar in 1974 and prior to

his 2018 Interim Suspension, had engaged in solo private practice in Damariscotta, Maine.

### **COUNT I**

In August 2018, Bar Counsel became aware of Hull's alleged conversion of approximately \$26,750.00 from two non-profit entities, hereinafter referred to as "CP" and "ST." Bar Counsel's office commenced an investigation and obtained Damariscotta Police Officer Erick Halpin's August 8, 2018 Affidavit and Request for Arrest Warrant concerning Hull. Officer Halpin's Affidavit detailed incidences of illegal conduct by Hull. In response to the Board's subsequent allegations concerning those same events, Hull offered minimal dispute and explanation. Accordingly, the Court finds as follows:

- a. CP is a non-profit entity, established to fund a student exchange program between Bath, Maine, and Tsugaru City, Japan;
- b. CP has a non-profit checking account with the Bath Savings Institution;
- c. The acting president of CP is Elizabeth Hartung;
- d. For the period of time at issue, the only two Board-elected signatories for CP's checking account were Jonathan Hull and Anita Mantais-Lyons;
- e. Hull had been involved with CP for many years, but only served as its Treasurer from June 8, 2016, until his resignation on May 24, 2018;

- f. At the beginning of 2018, Hartung had requested financial reports from Hull, but he failed to present or provide those reports. Hull also failed to attend CP's monthly meetings;
- g. On or about May 14, 2018, Hull telephoned Hartung and apologized to her, stating that he "had taken money out of the (CP) account and that he would repay it the following week;"
- h. Hartung then immediately contacted Mantais-Lyons who reported to her that Hull had made a similar admission and promise to her;
- i. Hull failed to make any refund in May as he promised to do;
- j. Hartung then emailed Hull requesting that he repay all converted monies to CP by May 30, 2018;
- k. Hull replied that he would "need more time" to make the complete repayment to the CP checking account;
- l. On May 30, 2018, Hartung reviewed CP's financial records at Bath Savings Institution. Hartung found copies of checks that Hull had written to himself with certain unidentifiable deposits, beginning in February 2017, totaling at least \$7,000.00;
- m. On June 1, 2018, Hull sent an email to Hartung stating that he had repaid \$500.00 to the CP checking account, but "would need more time to pay the rest;"
- n. On June 12, 2018, Hartung provided Officer Halpin with CP's monthly bank records from January 2016 through May 2018;

- o. From Officer Halpin's review thereof, he found twenty-eight withdrawals from the CP banking account that had been either credited to the banking account(s) of Hull or presented to him as cash;
- p. Hartung reported to Officer Halpin that all of Hull's withdrawals were unauthorized;
- q. A review of the twenty-eight individual check amounts along with other information contained in Officer Halpin's Affidavit confirmed several facts. Those facts included the following:
  - each of the checks was in an even dollar amount;
  - the combined dollar amount of the checks was \$24,750;
  - all but two of the twenty-eight checks were credited to one or more bank accounts belonging to Hull;
  - of the twenty-eight checks, nineteen were presented by Hull for deposit into one of his accounts at Damariscotta Bank & Trust;
  - the remaining seven checks were presented by Hull for deposit into his account at Bath Savings Institution; and
  - two of the checks were presented by and endorsed by Hull for cash at one of the above financial institutions.
- r. In addition to the twenty-eight check withdrawals between January 2016 and May 2018, Hull made three deposits into CP's account;

- s. Two of those deposits were drawn from one of Hull's accounts at Damariscotta Bank & Trust, and one was drawn from the First National Bank account of the non-profit "ST;"
- t. ST was established to assist at-risk youth, and Hull had served for a time as its Treasurer;
- u. CP had previously received grant funds from ST, prior to ST's dissolution;
- v. Hull did not record any of his withdrawals, or subsequent deposits, in CP's financial records;
- w. On May 24, 2018, Hartung removed Hull as an authorized signatory on CP's bank accounts;
- x. Between June and July 2018, Hull made five deposits from his personal accounts into CP's accounts, totaling \$6,000;
- y. Overall, Hull made unauthorized withdrawals from CP's accounts totaling \$24,750.00. He subsequently deposited from his client trust account, office operating account, and/or personal accounts a total of \$25,250.00 to CP's account.
- ~~z.~~ During the relevant time period, Hull also distributed \$10,000.00 from ST's bank account to CP's bank account, which Hull reports was duly authorized by the Board of ST as part of its charitable distribution program.

Based on the facts set forth within the above paragraphs, the Court finds that Hull engaged in violations of M. R. Prof. Conduct 1.7(a)(2) [conflict of

interest]; 4.1(a) [truthfulness in statements to others]; and 8.4(a)(b)(c) [misconduct; illegal conduct; fraud, deceit or dishonesty].

## **COUNT II**

On February 21, 2018, Martha L. Hills of Swoope, Virginia filed a grievance complaint with the Board. Hull filed his initial response on March 2, 2018, followed by supplemental responses in May 2018.

Relevant to the complaint are the circumstances leading up to Hills's interaction with Hull. In May 2017, Ms. Hills visited Hull at his law office and then authorized a \$1,000.00 charge on her credit card intended as a single payment toward Hull's representation of Chad Nickerson (Hills's son) in a family matter action. Hull did not prepare a written fee agreement with her, but had prepared one for the client, Chad Nickerson. Several months later (February 2018), Hull improperly charged an additional \$3,480.88 on Ms. Hills's credit card to be applied towards the fees in Hull's representation of Mr. Nickerson. When contacted by Ms. Hills later that day objecting to that charge, Hull immediately reversed the charge before receiving any funds. In making that credit card charge, Hull committed a violation of MRPC 8.4(c) [fraudulent conduct] by not requesting Ms. Hills' authorization to incur the \$3,480 charge..

Beyond that incident, Hull also failed to attend a court hearing dealing with Nickerson's custody matter. His failure constituted a violation of M. R. Prof. Conduct 1.3 [diligence] and 8.4(d) [conduct prejudicial to the administration of justice].

### **COUNT III**

As referenced within Count I, during the time period from June 23, 2014, through May 31, 2018, Hull misappropriated funds from a second nonprofit, “ST.” Four members of the ST Board of Directors filed a letter with Bar Counsel’s office on September 17, 2018, alleging Hull’s conversion of funds from ST. The Directors’ letter included a listing of thirty-seven checks drawn from ST’s account at the First National Bank. Each of those checks were payable to Hull from June 2014 through May 31, 2018.

Hull misappropriated approximately \$47,000 of ST’s funds. As a result, the non-profit filed a claim with the Lawyer’s Fund for Client Protection (LFCP) to address the conversion by Hull. Taking into account Hull’s initial repayments, the amount of ST’s Lawyer’s Fund claim was \$26,450, representing the funds ST then believed had not been re-paid by Hull. In April and August 2018, Hull made payments repaying the remaining funds he converted, overpaying ST in the amount of \$815.00. Following its consideration of the supplemental information provided by counsel for ST and Hull, the Trustees agreed with the parties’ request to dismiss ST’s claim for LFCP reimbursement.

Nevertheless, the Court finds that Hull’s serious conduct violated M. R. Prof. Conduct Rules 1.7(a)(2) [conflict of interest]; 4.1(a) [truthfulness in statements to others]; and 8.4(a)(b)(c) [illegal conduct, fraud, deceit or dishonesty].

Based upon Hull’s acknowledgment at this hearing, the Court finds that he removed and converted various amounts of money while serving as a fiduciary

for these non-profit entities. The Court is aware that because of Hull's misconduct and the Court's action in suspending him from the practice of law, various claimants have sought redress through the Lawyers' Fund for Client Protection (LFCP). Hull generally did not dispute those claims. He also reports that he does not have the funds to fully reimburse the claimants or the LFCP. The LFCP and Hull have reached an agreement to resolve all pending claims filed to date. In total, the LFCP has paid \$30,389.09 towards reimbursement of claims arising out of Hull's misconduct.

#### **COUNT IV**

In May 2008, Mr. Hull was serving as Personal Representative (PR) of the Estate of Wayne Plummer. Years later, information from the Estate bank account revealed that from 2009-2010, Hull withdrew approximately \$47,300 from Estate funds without explanation. Hull did so by issuing checks from the Estate account payable to himself. Sometime in 2010, Hull started to incrementally repay the Estate but there was still an outstanding balance of funds not repaid.

The parties were unable to agree on an amount that Hull failed to earn from his fiduciary service to the Plummer Estate. However, following its consideration of the claim the Estate filed against Hull, the Lawyer's Fund for Client Protection (LFCP) issued an \$18,500 award responsive to Hull's misconduct, the amount sought by the Plummer Estate but objected to by Hull. The Attorney General's office investigated the circumstances related to Hull's service for the Estate but did not criminally charge Hull. The Board understands



that such prosecution did not occur because the AAG reported to Bar Counsel that Hull's prosecution was barred by the statute of limitations.

Based upon a totality of these circumstances, the Court finds that Hull violated M. R. Prof. Conduct 1.5(a) [fees]; and 8.4(a)(b)(c)(d) [misconduct; illegal conduct; fraud, deceit or dishonesty; and conduct prejudicial to the administration of justice].

The Court is aware that as a result of Hull's professional misconduct, the affected parties have filed or will be filing claims with the Lawyers' Fund for Client Protection (LFCP). Thus far, Hull has responded to all filed claims, though he reports a lack of sufficient funds to fully reimburse the claimants or the LFCP.

Following the Board's subsequent request, the Court issued an Order that required Hull to disclose the entirety of his assets. During that disclosure period, Hull's office building underwent a contract for sale. After the Board learned of the pending transaction, it sought and received from the Lincoln County Superior Court an attachment on the sale proceeds. Hull and the LFCP have reached an agreement to resolve all pending claims filed to date and to dismiss the attachment action. As a result, there is no further action required by this Court regarding claims previously paid by the LFCP.

### **SANCTION**

M. Bar R. 21(c) delineates the grounds for lawyer discipline, the range of sanctions which may be imposed for professional misconduct, and the factors that the Court must consider prior to imposing any such discipline.

M. Bar R. 21(c) states:

Factors to be Considered in Imposing Sanctions. In imposing a sanction after a finding of lawyer misconduct, the Single Justice, the Court, or the Grievance Commission shall consider the following factors, as enumerated in the ABA Standards for Imposing Lawyer Sanctions:

- (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) whether the lawyer acted intentionally, knowingly, or negligently;
- (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) the existence of any aggravating or mitigating factors.”

The ABA Standards for Imposing Lawyer Discipline (ABA Standards) define the purposes of lawyer disciplinary proceedings, the public nature of those proceedings, and the purpose of the Standards themselves. The ABA Standards are designed to promote:

- (1) consideration of all factors relevant to imposing the appropriate level of sanction in an individual case;
  - (2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline;
  - (3) consistency in the imposition of disciplinary sanctions for the same or similar offenses within and among jurisdictions.
- Standard 1.3, *ABA Standards for Imposing Lawyer Sanctions*.

In a 2018 appellate decision, a six-member panel of the Maine Law Court was evenly divided on the issue of whether M. Bar R. 21(c) incorporates the ABA Standards as a “matter of law.”<sup>1</sup> Although there was some disagreement among the Court over the precise import of the ABA Standards, at a minimum, the Court

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<sup>1</sup> In *Board of Overseer of the Bar v. Prolman*, 2018 ME 28, three of the justices concluded that: “Rule 21(c) incorporates the framework and methodology of the ABA sanction standards, thereby requiring that framework to be explicitly applied after a finding of lawyer misconduct.” (*supra* at paragraph 46.) Conversely, the three remaining justices concluded that there was: “no need to incorporate the ABA’s lengthy and detailed ‘Standards for Imposing Lawyer Sanctions’ into the Maine Bar Rules as a matter of law. Although an adjudicator should consult that extended discussion when it is relevant to a particular sanction decision, the requirement that an adjudication must track that lengthy and minute detail in order to impose any sanction would create an unnecessarily cumbersome process.” (*supra* at paragraph 51.)

concluded that an adjudicator should consult those Standards as guidance in making its determination of appropriate sanctions.

M. Bar R. 21(c) is identical to ABA Standard 3.0. That Standard mandates the court's consideration of "(a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating and mitigating factors." In applying the ABA Standards, intentional acts of misconduct require the imposition of more significant sanctions than misconduct which results from a lawyer's negligence. Likewise, the amount of injury, or potential injury, to a client, the public, the legal system, or the profession is a significant factor. Generally, the sanction of disbarment appears to be reserved for intentional acts of misconduct, or misconduct which results in significant injury, or a combination of both.

### **VIOLATION OF DUTY OWED**

Pursuant to M. Bar R. 21(c) and the ABA Standards, the Court has considered the duty that Hull violated in committing professional misconduct. In each instance, Hull's behavior demonstrated violations of fiduciary duties owed to the entities he served. In addition, Hull violated duties that he owed as an officer of the court, duties to the public, and to his profession.

The Court is aware that Hull remains subject to pending criminal charges resulting from the conduct described herein. Those criminal charges have not yet been adjudicated, although counsel for Hull has indicated that it is likely that Hull and the prosecution will resolve the criminal case by agreement.

The correlating ABA Standard for the rules concerning clients and their property is 4.0. As detailed below, the Court finds the ABA Standard to be both relevant and applicable.

*ABA Standard 4.0 Violation of Duties Owed to Clients*

4.1 Failure to Preserve Client's Property

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

The correlating ABA Standard for the rules concerning unlawful conduct is 5.0. As detailed below, the Court finds the ABA Standard to be both relevant and applicable.

*ABA Standard 5.0 Violations of Duties Owed to the Public*

5.1 Failure to Maintain Personal Integrity

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice...fraud, extortion, misappropriation, or theft...or an attempt...to commit any of these offenses.

**DEFENDANT'S MENTAL STATE**

Pursuant to M. Bar R. 21(c) and the ABA Standards, the Court has also considered Hull's mental state in committing the various acts of professional misconduct. Counsel for Hull reports that Hull carries a diagnosis of post-traumatic stress disorder, originally stemming from his military service in Vietnam. During the relevant periods of this matter, Hull suffered from both significant depression and anxiety. While he has been under medical care for

diabetes, high blood pressure and a sleep disorder, he was diagnosed in 2018 for PTSD.

Based upon the Court's findings and Hull's general agreement with those findings, the Court concludes that his actions were intentional in nature.

### **ACTUAL OR POTENTIAL INJURY**

Pursuant to M. Bar R. 21(c) and the ABA Standards, the Court has considered the actual and or potential injury resulting from Hull's misconduct. As noted above, in each of the four counts, there was serious and intentional misconduct that exacted financial injury to the various entities, even though the above-named entities were repaid. There was also emotional injury to the Plummer family resulting from Hull's misconduct during his service as personal representative.

### **APPLICATION OF AGGRAVATING AND MITIGATING FACTORS**

Pursuant to M. Bar R. 21(c) and ABA Standards 9.2 and 9.3, the Court has considered the applicable aggravating and mitigating factors. While the correlating ABA Standards themselves warrant Hull's disbarment, the following aggravating factors are also implicated:

- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (i) substantial experience in the practice of law; and

(k) illegal conduct

In addition to the aggravating factors, there appears to be mitigating factors for the Court's consideration. Those factors are:

(c) personal or emotional problems

(h) physical disability

(k) imposition of other penalties or sanctions

(l) remorse

As is evident, the aggravating factors enumerated herein outweigh the mitigating factors. Recognizing the serious harm resulting from Hull's misconduct, this Court concludes that the appropriate sanction to impose is a multi-year disbarment. Hull acknowledges that his actions warrant the Court's imposition of such a sanction.

Accordingly, and consistent with the parties' agreement, the Court hereby Orders that Jonathan C. Hull is disbarred for a period of five years from the practice of law as of the date of this order. The Court further orders that any subsequent reinstatement of Jonathan C. Hull shall occur only through his petition filing and after Court action on that petition, pursuant to the Maine Bar Rules.

In the event that the Lawyers' Fund for Client Protection (LFCP) pays any new claims on behalf of any of Mr. Hull's previous clients after the effective date of this order, he shall be responsible for reimbursement of those claims in a manner acceptable to the Board and to the LFCP Trustees. Compliance with this

provision shall be a consideration for the Court upon any petition for reinstatement.

Dated: 6/10/2020

/s/  
Valerie Stanfill  
Justice, Maine Superior Court  
Sitting as Single Justice, by Designation